

**COMMONWEALTH OF VIRGINIA
COOPERATIVE AGREEMENT
BY AND BETWEEN
THE COUTY OF FAUQUIER
AND
DEPARTMENT OF GAME AND INLAND FISHERIES**

| This Agreement entered into this ____ day of _____, ~~2007~~2006 by the County of Fauquier hereinafter called the "County", and the Commonwealth of Virginia Board of Game and Inland Fisheries by the Department of Game and Inland Fisheries hereinafter called the "Department".

WITNESSETH:

WHEREAS, County has operated Lake Brittle under a Concession Agreement with Department since 2002; and

WHEREAS, the Department and the County are interested in improving the overall facility and management of Lake Brittle; and

WHEREAS, Department and County are desirous of a twenty-five (25) year Agreement for the purpose of cooperatively improving and operating the Lake Brittle property; and

NOW, THEREFORE, in consideration thereof, and of the premises, terms and covenants herein, Department and County agree as follows:

1. **PRIOR AGREEMENTS:** The Concession Agreement dated February 1, 2002, Attachment A, and any other Agreement written or verbal shall be superseded in their entirety by this Agreement.
2. **TERM OF AGREEMENT:** Unless terminated in accordance with the terms set forth herein, this agreement shall commence on the date of its execution by both parties hereto and terminate 25 years from the date of commencement.
3. **SCOPE OF AGREEMENT:** The Agreement shall include all grounds, water, and facilities within the Lake Brittle property, hereinafter called the "Lake" as shown on Attachment B. County shall be responsible for all day-to-day maintenance and operations of those grounds, water, and facilities. Department shall be responsible for all aspects of dam safety compliance with state regulations and applicable safety responsibilities and fishery management. All major repairs and improvements to the grounds, water, and/or facilities shall be approved by Department and funded/constructed as mutually agreed upon by both parties. Major repairs and improvements are defined as those with a value of \$5,000 or more. The Lake will meet but not be limited to the following criteria:
 - a. Remain open to the public;
 - b. Maintain handicapped accessibility to the lake where appropriate, pier, and fishing resource center;

- c. Be free of charge for use of the Lake, boating access and pier;
 - d. Be maintained by the County to acceptable maintenance standards as referenced in Attachment C.
 - e. Be open to the public from 5 a.m. to midnight at least one hour before sunrise until one hour after sunset every day of the year.
 - f. Concession/boat rental operations shall be open from March 15 – October 15 at least 5 days per week.
4. USE OF DEPARTMENT FUNDS: The Department's funds shall only be used for the purposes and activities covered in the Agreement.
5. APPLICABLE LAWS: This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Virginia.
6. SEVERABILITY: Each paragraph and provision of this Agreement is severable from the entire Agreement; and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.
7. COLLATERAL CONTRACTS: Where there exists any inconsistency between this Agreement and other provisions of collateral Contracts, which are made a part of this Agreement by reference or otherwise, the provisions of this Agreement shall control.
8. INTEGRATION AND MODIFICATION: This Agreement and attachments incorporated herein constitutes the entire Agreement between the Department and the County. No alteration, amendment or modification in the provisions of this Agreement shall be effective unless it is reduced to writing, signed by the parties and attached hereto.
9. DISCLAIMER: Nothing in this Agreement shall be construed as authority for either party to make commitments that will bind the other party beyond the project contained herein. Furthermore, the County shall not assign, sublet or subcontract any work related to this Agreement or interest it may have herein without the prior written consent of the Department except those services such as security, repairs, maintenance and mowing consistent with activities currently subcontracted by the County at other facilities without consent of the Department.
10. TERMINATION FOR CAUSE: Either the Department or County may terminate the Agreement in whole, or in part, at any time before the date of completion, upon written notice to the other party that there has been a failure to comply with the conditions of the Agreement. In connection with such termination any recovery hereunder shall not exceed the actual expenditures which the non-breaching party may have incurred in accordance with its performance of this agreement.
11. TERMINATION FOR CONVENIENCE: The Department and/or the County may terminate the Agreement in the event that funds are not appropriated by either party to permit the continued operation of the facility. The Department or the County may terminate the Agreement in

whole, or in part, at any time before the date of completion, upon written notice to the other party if both parties agree that the continuation of the Agreement will not produce beneficial results commensurate with further expenditure of funds. If termination is initiated by the Department the Department agrees to pay the County current depreciated value of any permanent buildings that were constructed with the approval of the Department during the term of the contract. If termination is initiated by the County, any improvements constructed by the County shall become the property of the Department.

12. COUNTY AGREEMENT: The County agrees as follows:

- a. The land set aside by this Agreement will only be used for the purposes of recreation related to the Lake including but not limited to administrative purposes. Any other uses must be submitted in writing and approved, in advance, by both parties.
- b. The Lake's hours of operation will be 5 a.m. to midnight ~~one-hour before sunrise to one-hour after sunset~~ year round.
- c. Piers and boat launching facilities are for launching and retrieval of watercraft.
- d. Charge no fees for use of the Lake and associated facilities.
- e. ~~Department will survey the lake boundary and~~ County will identify and mark the boundary of the Lake and associated bank fishing areas.
- f. Maintain signage installed at the Lake by the Department.
- g. Patrol the Lake as it deems appropriate to enforce local laws, rules and other public safety regulations, and direct traffic during peak use times.
- h. Establish rules and regulations on appropriate public usage, vehicular access, litter control, and sanitation at the Lake. Keep the Lake open to the public for boating access and fishing, except for reasonable closures necessary for weather, maintenance and emergencies. Authority shall be granted for enforcement of the most current version of the County Parks ordinance for the Lake, the present version included as Attachment E.
- i. Maintain the facility or have maintained its improvements and grounds for the term of this Agreement. Such Maintenance shall include cutting weeds and brush, maintaining the parking lot surfaces including parking barriers and bollards, maintaining drainage ditches, mowing the grass at established public access points, collection and removal of trash and garbage, maintain launching water depth (a minimum of 4 feet at mean low water at the end of the ramps), removal of debris and other routine maintenance necessary for safe public use of the Lake. Such maintenance shall be consistent with the then current practices and standards outlined found in Attachment C.
- j. Maintain the striping pattern in the parking lot and ramp area including restriping these areas when needed.
- k. Install a gate at entrance to Lake.

13. DEPARTMENT AGREEMENT: The Department, subject to available funding and appropriation by the General Assembly, agrees to:

- a. Patrol the Lake as it deems appropriate to enforce game, inland fish and boat laws as well as local regulations related to the public use of

- the Lake pursuant to its authority.
- b. Erect signs related to direction, regulations of the Lake, boundaries, and public fishing rights and access.
 - c. Make the necessary improvements to the Lake as needed, including the ramps, pier and parking area, and be responsible for costs associated with those improvements. The necessity for improvements shall be at the sole discretion of the Department. The County shall be notified in advance of any proposed changes and given the opportunity to comment prior to the change.
 - d. Provide obvious and conspicuous signs acknowledging participation of the County, Department, and any additional partners in any improvements.
 - e. Provide lighting from dusk to dawn and pay all related charges.
 - f. Allow the County to operate a concession operation for the purpose of renting equipment, sales of food and non-food items, and conduct programs and events related to the Lake.
 - g. Department will continue to pursue options and funding to construct a Fishing Resource Center. ~~construct a Fishing Resource Center at the Lake within 2 years of execution of this document. continue to make construction of a Fishing Resource Center an annual CIP priority.~~

14. AGREEMENT DOCUMENTS: The Agreement documents, incorporated herein, shall consist of:

- a. This signed form;
- b. The attached description consisting of the following:
 - i. Concession Agreement (Attachment A)
 - ii. Plat of property (Attachment B)
 - iii. Maintenance Standards (Attachment C)
 - iv. Site Plan (Attachment D)
 - v. County Parks Ordinance (Attachment E)

15. THIRD PARTY AGREEMENTS: There are no third party beneficiaries to this Agreement.

16. NOTICES: All notices hereunder must be in writing and shall be deemed valid if sent via one of the following methods:

- a. certified mail, return receipt requested;
- b. overnight delivery service, or
- c. facsimile transmission.

Notices shall be addressed as follows (or to any other address the parties may designate by like notice):

Department: Commonwealth of Virginia,
Board of Game and Inland Fisheries
Virginia Department of Game and Inland Fisheries
ATTN: Office of Capital Programs, Real Property Mgmt.
4010 West Broad Street
Richmond, Virginia 23230
Telephone No.: 804-367-2212
Fax No.: 804-367-2311

County: Fauquier County Administrator
10 Hotel Street, Suite 204
Warrenton, VA 20186
Telephone No.: 540-347-8680
Fax No.: 540-349-2331

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby:

County: County of Fauquier

By: _____
Name, Title

Date: _____

Approved by Resolution duly adopted on _____
Date

By: _____

Department: Department of Game and Inland Fisheries for
the Board of Game and Inland Fisheries

By: _____
J. Carlton Courter, III, Director
Colonel W. Gerald Massengill, Interim Director

| 8/21/06draft